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No. 80-748

In the Supreme Court of the United States

October Term, 1980

GOLDA M. ROOT,

Petitioner,

vs.

WESTERN CONFERENCE OF TEAMSTERS PENSION TRUST FUND,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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QUESTION PRESENTED

The question presented by the Petition for Certiorari distorts the factual and legal issues in the case. The actual question presented is as follows:

When a pension trust fund denies an applicant's claim for pension benefits and gives the reason for that denial, does the applicant's cause of action for an alleged improper denial accrue upon that denial or some eleven years later when the applicant decides to begin investigating the claim?

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PRELIMINARY STATEMENT

The petition for a writ of certiorari in this case presents routine questions regarding the statute of limitations

and the accrual of causes of action in cases involving claims for pension benefits.

There is no conflict in the circuits on any of these questions, and the petition does not present any important issue that warrants the attention of this Court. In any event, the decision of the court of appeals, in the form of an unpublished memorandum, was correct.

STATEMENT OF THE CASE

Petitioner's statement of the case is filled with misstatements of the record before the court of appeals. The essential facts of the case are correctly stated in the memorandum decision of the court of appeals (Petition, Appx. A). Also set forth below are other facts contained in the record before the court of appeals.

Petitioner, hereinafter referred to as "appellant," is the surviving spouse of Howard Warren Root, a former member of various Teamster local unions and a former participant in the Western Conference of Teamsters Pension Plan ("Plan").[1] She applied for pension benefits following the death of her husband. As the court of appeals noted, the Trust Fund denied appellant's claim on June 29, 1966, and gave her the specific reason for its denial: at the time of his death appellant's husband did not have the 15 years of unbroken

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[1] The Plan is administered by the Western Conference of Teamsters Pension Trust Fund ("Trust Fund"), the respondent herein. The Trust Fund is an entity separate and apart from the Teamsters Union. It is comprised of a board of trustees, half of whose members are employer representatives and half union representatives. The Trust Fund should also not be confused with the Central States Teamsters Pension Fund, the much-publicized and much-investigated Teamsters pension plan in the Midwest.

service necessary for her to be eligible to receive benefits (Petition, Appx., pp. 2-3). Appellant filed this action seeking pension benefits on October 31, 1977, more than 11 years after her application was denied.

It was undisputed that California's four-year statute of limitations applied. The court of appeals found that appellant's cause of action accrued in 1966 when her claim for pension benefits was denied because the denial "is both the act constituting the possible violation of rights and notice to an applicant of that possibility" (Appx., p. 2). Moreover, the court found no reason for tolling the statute:

> "Appellant has not shown that the Pension Fund induced her to refrain from commencing suit or that it fraudulently concealed facts which prevented her from realizing the possibility that her rights were being infringed. * * * [T]here was nothing about the Pension Fund's denial of benefits to

> appellant that lulled her into a false sense of security as to the status of her claim or misled her as to the time in which she could bring suit. * * * [W]hen it rejected her claim, the Pension Fund gave appellant the specific reason for the denial: at the time of his death, appellant's husband did not have the 15 years of unbroken union membership necessary for her to be eligible to receive benefits" (Appx., pp. 2-3).

Accordingly, the court of appeals held that appellant's action was barred by the statute of limitations.

Appellant erroneously asserts that the Trust Fund's determination in 1966 was incorrect and based upon a faulty interpretation of Mr. Root's union cards, which were in the possession of the Trust Fund, and that she did not have access to the union cards or other information from which to verify the Trust Fund's determination (Petition, p. 2). In fact, when the Trust Fund moved for summary judgment, it obtained

these union cards from Mr. Root's union and presented them to the district court. Contrary to appellant's claim, they showed that Mr. Root had not attained the requisite 15 years of unbroken service necessary for a benefit.

REASONS WHY THE PETITION SHOULD BE DENIED

A. The petition does not present any important legal issues for this Court.

The decision of the court of appeals properly recognizes the judicial interest in preventing stale claims and properly rejected appellant's efforts to exempt all pension applicants from the statute of limitations. Appellant's assertion is that the statute should not begin to run until the claimant, regardless of his diligence or lack of it,

decides to file suit. She is asking this Court to excuse 11 years of idleness on this matter despite the Trust Fund's full and timely disclosure that she was not entitled to benefits. Her claim is so patently without foundation that review by this Court is unwarranted.

The court of appeals followed established principles of law in holding that an applicant's cause of action accrues upon denial, and that any investigation the applicant chooses to make to evaluate the accuracy of this determination must occur promptly after denial.

B. The court of appeals correctly held that appellant's claim was barred by the statute of limitations.

As the court of appeals correctly concluded, a cause of action for

pension benefits accrues when the trust fund denies the claim (Petition, Appx., p. 2). Other courts that have considered this issue have reached the same conclusion (Morgan v. Laborers Pension Trust Fund for N. Cal. (N.D.Cal. 1977) 433 F.Supp. 518, 522 n. 5; accord Reiherzer v. Shannon (7 Cir. 1978) 581 F.2d 1266, 1272). Appellant has offered no contrary authority, and there is none.

There is no basis for appellant's contention that the court of appeals failed to consider that because the Trust Fund is a fiduciary, her cause of action should not accrue until she becomes aware of or should have become aware of the act constituting a breach of fiduciary duty (Petition, p. 2). As the court of appeals noted, the Trust Fund's 1966 denial "is both the act constituting the possible violation of

rights and notice to an applicant of that possibility" (Petition, Appx., p. 2). Appellant was put on notice of the Trust Fund's position in 1966, and her time to act began running at that point.

Appellant erroneously contends that the result of the case would be different if the court of appeals would have applied state law instead of Federal law (Petition, pp. 5-6). However, Federal law regarding the accrual of causes of action against a fiduciary is the same as the state law proffered by appellant. In General Petroleum Corporation v. Dougherty (9 Cir. 1941) 117 F.2d 529, 540, the court of appeals held that a cause of action against a fiduciary may be postponed until the beneficiary knows of the repudiation of the trust or reasonably should have known it. Here

appellant knew of the potential repudiation of trust at the time her application for benefits was denied in 1966.

For this reason, appellant's reliance on Johnson v. Railway Express Agency (1975) 421 U.S. 454, is misplaced. Johnson held that in borrowing a state statute of limitation, a Federal court should look to interrelated state provisions regarding tolling and revival, so long as those provisions are not inconsistent with Federal policy. In this case the borrowed California statute of limitations is the four-year period applicable to claims based upon a written instrument (i.e., the pension plan). Appellant has not and cannot point to any relevant state law that might toll this statute here; she has simply referred the Court to state law regarding the accrual of causes of action against fiduciaries. However, Federal law on

this point is the same. Therefore, Johnson would have no effect on the result here.

The two California decisions cited by appellant (Neel v. Magana, Olney, Levy, Cathcart & Gelfand (1971) 6 Cal.3d 176, 491 P.2d 1161, 98 Cal.Rptr. 837; Amen v. Merced County Title Co. (1962) 58 Cal.2d 528, 375 P.2d 33, 25 Cal.Rptr. 65) held that the causes of action did not arise until the plaintiffs were aware of the conduct because the plaintiffs there were ignorant of the act constituting the alleged breach of fiduciary duty. But in this case appellant had knowledge of the Trust Fund's act in 1966. Her cause of action accrued then.

CONCLUSION

For the reasons stated, the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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